

The House Committee on Judiciary Non-Civil offers the following substitute to HB 226:

A BILL TO BE ENTITLED  
AN ACT

To amend Article 3 of Chapter 12 of Title 16 of the Official Code of Georgia Annotated, relating to crimes involving obscenity in general, so as to strike in its entirety existing provisions relating to criminal distribution and dissemination of obscene materials and insert new provisions relating to the same subject; to define the nature of the offense, define terms, provide an affirmative defense, and provide for other related matters; to provide for an effective date and applicability; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

**SECTION 1.**

Article 3 of Chapter 12 of Title 16 of the Official Code of Georgia Annotated, relating to crimes involving obscenity in general, is amended by striking in its entirety Code Section 16-12-80, relating to criminal distribution and dissemination of obscene materials, and inserting in its place a new Code Section 16-12-80 to read as follows:

"16-12-80.

(a) A person commits the offense of distributing obscene material when he or she sells, lends, rents, leases, gives, advertises, publishes, exhibits, or otherwise disseminates to any person any obscene material of any description, knowing the obscene nature thereof, or offers to do so, or possesses such material with the intent to do so, provided that the word 'knowing,' as used in this Code section, shall be deemed to be either actual or constructive knowledge of the obscene contents of the subject matter; and a person has constructive knowledge of the obscene contents if he or she has knowledge of facts which would put a reasonable and prudent person on notice as to the suspect nature of the material; provided, however, that the character and reputation of the individual charged with an offense under this law, and, if a commercial dissemination of obscene material is involved, the character and reputation of the business establishment involved may be placed in evidence by the defendant on the question of intent to violate this law. Undeveloped photographs, molds,

1 printing plates, and the like shall be deemed obscene notwithstanding that processing or  
2 other acts may be required to make the obscenity patent or to disseminate it.

3 (b) Material is obscene if:

4 (1) To the average person, applying contemporary community standards, taken as a  
5 whole, it predominantly appeals to the prurient interest, that is, a shameful or morbid  
6 interest in nudity, sex, or excretion;

7 (2) The material taken as a whole lacks serious literary, artistic, political, or scientific  
8 value; and

9 (3) The material depicts or describes, in a patently offensive way, sexual conduct  
10 specifically defined in subparagraphs (A) through (E) of this paragraph:

11 (A) Acts of sexual intercourse, heterosexual or homosexual, normal or perverted,  
12 actual or simulated;

13 (B) Acts of masturbation;

14 (C) Acts involving excretory functions or lewd exhibition of the genitals;

15 (D) Acts of bestiality or the fondling of sex organs of animals; or

16 (E) Sexual acts of flagellation, torture, or other violence indicating a sadomasochistic  
17 sexual relationship.

18 (c) Any device designed or marketed as useful primarily for the stimulation of human  
19 genital organs is obscene material under this Code section.

20 (d) Material not otherwise obscene may be obscene under this Code section if the  
21 distribution thereof, the offer to do so, or the possession with the intent to do so is a  
22 commercial exploitation of erotica solely for the sake of their prurient appeal.

23 (e) It is an affirmative defense under this Code section that ~~dissemination of~~ selling,  
24 lending, renting, leasing, advertising, publishing, exhibiting, or otherwise disseminating  
25 the material was restricted to:

26 (1) A person associated with an institution of higher learning, either as a member of the  
27 faculty or a matriculated student, teaching or pursuing a course of study related to such  
28 material; ~~or~~

29 (2) A person while working in an official capacity in a public library; or

30 ~~(2)(3)~~ (3) A person whose receipt of such material was authorized in writing by a licensed  
31 medical practitioner or psychiatrist.

32 (f) A person who commits the offense of distributing obscene material shall be guilty of  
33 a misdemeanor of a high and aggravated nature."

**SECTION 2.**

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2 This Act shall become effective upon its approval by the Governor or upon its becoming law  
3 without such approval and shall apply only with respect to offenses committed on or after  
4 that effective date.

**SECTION 3.**

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6 All laws and parts of laws in conflict with this Act are repealed.